

## REMARKS

The Office Action mailed January 7, 2009, has been received and reviewed. Claims 1-21 are pending in the application. Claims 1-5 are allowed. Claims 6-13 and 18-21 stand rejected. Claims 14-17 are objected to. Applicant has amended claims 6 and 14-18, and respectfully requests reconsideration of the application as amended herein. No new matter has been added.

### Allowed Claims

Claims 1-5 are allowed. Applicant acknowledges this indication with appreciation.

### Claim Objections

The Office Action states:

Claims 14-17 are objected because of the following informalities:

With respect to claim 14, in lines 1-2, the Examiner requests Applicant replace "Processor-readable medium including processor-executable instructions encoded thereon, the instructions, comprising" with -A computer-readable medium---.

With respect to claims 15-17, in line 1, replace "The processor-readable medium" with -The computer-readable medium---. (Office Action, p. 2).

Applicant has amended claims 14-17 as requested by the Examiner and respectfully requests the objections of claims 14-17 be withdrawn.

### 35 U.S.C. § 102(e) Anticipation Rejections

#### Anticipation Rejection Based on U.S. Patent No. 6,771,700 to Razoumov et al.

Claims 6-13 and 18-21 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,771,700 to Razoumov ("Razoumov"). Applicant respectfully traverses this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The 35 U.S.C. § 102(e) anticipation rejections of claims 6-13 and 18-21 are improper because Razoumov does not describe, either expressly or inherently, the identical inventions in as complete detail as are contained in the claims. Since Razoumov does not describe, either expressly or inherently, the identical inventions in as complete detail as are contained in the claims, Razoumov cannot anticipate under 35 U.S.C. § 102 the presently claimed invention of amended independent claim 6 and claims 7-13 depending therefrom.

In the Response to Arguments, the Examiner states that Applicant's "independent claims 6 and 18 do not recite that the adjustments are made during a first transmission." (Office Action, p. 6). The Office Action then continues, "Instead, claims 6 and 18 recite 'adjusting the first transmission energy setpoint on occurrence of a first transmission error in the first transmission.'" (Office Action, p. 6).

Applicant respectfully notes that Applicant's invention as claimed is not drawn to "adjustments are made during a first transmission" as alleged. Applicant's invention as claimed in independent claims 6 and 18 recite a first transmission energy setpoint for transmission of the data and a retransmission energy setpoint for retransmission of the data.

Specifically, Applicant's invention as presently claimed in independent claim 6, from which claims 7-13 depend and independent claim 18, from which claims 19-21 depend, recites:

6. In a wireless communication system, a method comprising:  
determining *a first transmission energy setpoint* to achieve a first transmission frame error rate *in a first transmission of data*;  
adjusting the first transmission energy setpoint on occurrence of a first transmission error in the first transmission, wherein the first transmission error is received from a receiver;  
determining *a retransmission energy setpoint* to achieve a retransmission frame error rate *in a retransmission of the data*; and  
adjusting the retransmission energy setpoint on occurrence of a retransmission error in the retransmission, wherein the retransmission error is received from the receiver.  
(Emphasis added.)

18. An apparatus, comprising:  
means for determining *a first transmission energy setpoint* to achieve a first transmission frame error rate *in a first transmission of data*;  
means for adjusting the first transmission energy setpoint on occurrence of a first transmission error in the first transmission, wherein the first transmission error is received from a receiver;  
means for determining *a retransmission energy setpoint* to achieve a retransmission frame error rate *in a retransmission of the data*; and

means for adjusting the retransmission energy setpoint on occurrence of a retransmission error in the retransmission, wherein the retransmission error is received from the receiver. (Emphasis added.)

Generally, Razoumov does not appear to have two independently adjustable setpoints used to perform independent steps. Specifically, at least Applicant's claimed elements of "determining *a first transmission energy setpoint* from a first transmission to achieve a first transmission frame error rate *in a first transmission of data*" and "a determining *a retransmission energy setpoint* to achieve a retransmission frame error rate *in a retransmission of the data*" are not disclosed in Razoumov.

First, Applicant respectfully notes that while "*adjustments are made on occurrences of transmission errors*", Razoumov discloses adjustments based on occurrences of errors in a different transmission while Applicant claims adjustments based on occurrences of errors in that transmission. Specifically, an occurrences in errors in the *transmission of the data* affect the adjustment to the initial transmission energy setpoint while occurrences of errors in a *retransmission of the data* affect the adjustment to the *retransmission of the data*. Applicant does not dispute that Razoumov discloses adjusting energy levels, however, Razoumov's approach is not the same approach for adjusting as claimed by Applicant in amended independent claim 6.

According to Razoumov, Razoumov's adjustments to the power level for a successive transmission is based upon the outcome (e.g., frame error rate) of the previous transmission. Specifically, Razoumov discloses the power levels of successive transmissions (e.g., retransmission 1, retransmission 2, etc.) are based upon the outcome of the previous transmissions (e.g., transmission, retransmission 1, etc.) and not based upon the outcome of that same transmission. (Razoumov, col. 4, lines 30-40, col. 3, lines 62-63 and col. 7, formula 22). In other words, Razoumov discloses adjusting a subsequent transmission's power level based upon the outcome of the immediately previous transmission.

In distinct contrast, Applicant's invention as claimed in amended independent claim 6 recites, in part, "*adjusting the first transmission energy setpoint on occurrence of a first transmission error in the first transmission*" and "*adjusting the retransmission energy setpoint on occurrence of a retransmission error in the retransmission*". Accordingly, Applicant's invention as presently claimed in amended independent claims 6 and 18 are not disclosed in "as

complete detail as is contained in the claim” as is required for anticipation under 35 U.S.C. §102. Therefore, Razoumov **cannot** anticipate under 35 U.S.C. §102 Applicant’s invention as presently claimed in amended independent claims 6 and 18, and claims 7-13 and 19-21 respectively depending therefrom.

Accordingly, such claims are allowable over the cited prior art and Applicant respectfully requests that such rejections be withdrawn.

### **ENTRY OF AMENDMENTS**

The proposed amendments to claims 6 and 14-18 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application. Further, the amendments do not raise new issues or require a further search. Finally, if the Examiner determines that the amendments do not place the application in condition for allowance, entry is respectfully requested upon filing of a Notice of Appeal herein.

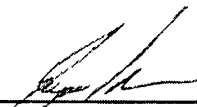
## CONCLUSION

Claims 1-21 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicant's undersigned representative.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

Dated: April 6, 2009

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